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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 **MICHAEL MILLER,**  
11 **Plaintiff,**

12 **vs.**

13 **NIAGARA CREDIT SOLUTIONS, INC., a**  
14 **New York corporation, TAMI-LYN O'HARA,**  
15 **an individual, "MR. KING," an individual,**  
16 **DOES I-V, inclusive and ROE Corporations**  
17 **V-X, inclusive,**

18 **CASE NO.:**

19 **COMPLAINT**

20 **EIGHT PERSON JURY**  
21 **DEMANDED**

22 **Defendants.**

23  
24 **PRELIMINARY STATEMENT**

25 **I.**

26 **INTRODUCTION**

27 **1.** This is an action for damages brought by an individual consumer for  
28 Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*,  
as amended (hereinafter "FDCPA"), and Nevada Revised Statutes (hereinafter "NRS"),  
Chapters 598 *et seq.*, and 649 *et seq.*, as amended, and common law torts (hereinafter  
"State Acts"), all of which prohibit debt collectors from engaging in abusive, deceptive,  
harassing, unfair, and illegal practices.

29  
30 **II.**

31 **JURISDICTION**

32 **2.** Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §  
33 1337, 18 U.S.C. §§ 1964(a), (c), 18 U.S.C. § 1965 *et seq.*, and supplemental jurisdiction  
exists for the state law claims pursuant to 28 U.S.C. § 1337.

III.

## **PARTIES**

**3.** Plaintiff MICHAEL MILLER (hereinafter “Miller”), is a natural person residing in Clark County, Nevada.

#### 4. Miller:

- (I.) is a “consumer” as defined by 15 U.S.C. § 1692a(3);
  - (ii.) is a “person” within the meaning of 18 U.S.C. § 1961(3);
    - (iii.) allegedly owes a (past-due) consumer “debt” as defined by 15 U.S.C. and NRS 649.010.

5. Defendant NIAGARA CREDIT SOLUTIONS, INC. ("NCS") is a foreign corporation, the principal purpose of whose business is the collection of debts, operating a debt collection agency from its principal place of business in Williamsville, New York, and regularly collect or attempts to collect debts owed or due or asserted to be owed or due another, and is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

6. Defendant TAMI-LYN O'HARA ("O'Hara") is Vice-President of Collections for Defendant NCS at all time relevant to this complaint and regularly collect or attempts to collect debts owed or due or asserted to be owed or due another, and is a "debt collector" as defined by 15 U.S.C. § 1692a(6).

7. On information and belief, "MR. KING" is a natural person employed by Defendant NCS at all time relevant to this complaint and is a "debt collector" as defined by the 15 U.S.C. § 1692a(6). Plaintiff requests leave of court to insert the true name of "Mr. King" if it is later determined to be different as debt collectors like "Mr. King" usually use desk names or aliases and not their true names.

**8.** Plaintiff is unaware of the true names and legal capacities, whether individual, corporate, associate, or otherwise, of the Defendants DOES I-V and ROE Corporations VI-X, sued herein inclusive, and therefore sues Defendants by such fictitious names.

1       **9.** Plaintiff is informed and believes, and thereon alleges, that each of the  
2 Defendants designated herein as DOES I-V and ROE Corporations VI-X, are in some  
3 way legally responsible and liable for the events referred to herein, and proximately  
4 caused the damages alleged herein.

5       **10.** Plaintiff prays leave to insert said Defendants' true names and legal  
6 capacities when ascertained.

7       **11.**    At all times material hereto, and in doing the acts and omissions alleged  
8 herein, the Defendants and each of them, including DOES I-V and ROE Corporations  
9 VI-X, acted individually and/or through their officers, agents, employees, and  
10 co-conspirators, including the fictitious Defendants named herein, each of whom was  
11 acting within the purpose and scope of that agency, employment and conspiracy, and  
12 said acts and omissions were known to, and authorized and ratified by, each of the other  
13 Defendants.

IV.

## **FACTUAL ALLEGATIONS**

Plaintiff repeats and realleges and incorporates by reference paragraphs one through eleven above.

18       **12.**    On or about January 5, 2005, Defendants initiated a campaign of unfair,  
19 unreasonable, unlawful, misrepresented, harassing, and abusive debt collection  
20 activities directed against Plaintiff in Clark County, Nevada, by engaging in multiple  
21 telephone calls and discussions with Plaintiff regarding the collection of an alleged debt  
22 with Bank of America.

23       **13.**    On or about January 5, 2005, Defendants' initial communication with  
24 Plaintiff occurred via a telephone call with Plaintiff, wherein Defendant "Mr. King"  
25 identified himself as an attorney representing Defendant NCS, demanded that Miller  
26 make immediately payment to NCS on the alleged debt of over \$14,000.00, threatened  
27 to file a lawsuit against Plaintiff for the alleged debt, garnish Plaintiff's bank accounts  
28 and place a lien on his home if payment was not received that day.

**14.** During the January 5, 2005 telephone call, Plaintiff disputed that he owed this debt and informed "Mr. King" that this was the first time he was contacted by NCS regarding the alleged debt.

**15.** "Mr. King" informed Plaintiff that a letter from NCS may have been sent to Plaintiff's former address and that even though Plaintiff advised "Mr. King" that the letter was not received, NCS was not required to provide Plaintiff any further information on the debt and NCS would not send Plaintiff any further written correspondence until the debt was paid in full.

**16.** Plaintiff was extremely upset after the conversation with "Mr. King" and was so worried about losing his savings and home, that he immediately applied for a second mortgage on his house to acquire funds to pay the alleged debt.

17. During a series of telephone conversations with "Mr. King" and O'Hara, over the next six weeks, Defendants continued harassing Plaintiff, including but not limited to: intentionally interfering with Plaintiff's attempts to have the Bank of America investigate the alleged debt, by insisting that they be paid directly by the lender from the home equity loan Plaintiff initiated as a result of Defendants' harassment, by threatening to file a lawsuit in retaliation for Plaintiff's communication with the Bank of America, garnish bank accounts and put a lien on Plaintiff's house, and accept a post-dated check over the telephone.

**V.**

Plaintiff repeats and realleges and incorporates by reference paragraphs one through seventeen above.

**18.** Absent from the January 5, 2005 telephone call from Defendants regarding the alleged Bank of America debt, was any mention of the provisions set out in 15 U.S.C. § 1692g(a), which states in pertinent part:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is

1 contained in the initial communication or the consumer has  
 2 paid the debt, send the consumer a written notice  
 3 containing--

- 4 (1) the amount of the debt;
- 5 (2) the name of the creditor to whom the debt is owed;
- 6 (3) a statement that unless the consumer, within thirty days  
 7 after receipt of the notice, disputes the validity of the debt, or  
 8 any portion thereof, the debt will be assumed to be valid by  
 9 the debt collector;
- 10 (4) a statement that if the consumer notifies the debt  
 11 collector in writing within the thirty-day period that the  
 12 debt, or any portion thereof, is disputed, the debt collector  
 13 will obtain verification of the debt or a copy of a judgment  
 14 against the consumer and a copy of such verification or  
 15 judgment will be mailed to the consumer by the debt  
 16 collector; and
- 17 (5) a statement that, upon the consumer's written request  
 18 within the thirty-day period, the debt collector will provide  
 19 the consumer with the name and address of the original  
 20 creditor, if different from the current creditor.

19. Defendants further violated this section by not sending a letter to Plaintiff,  
 20 at the correct address, within five (5) days of the January 5, 2005 conversation  
 21 providing the notices set forth above.

22. Defendants' collection efforts violated 15 U.S.C. §1692d, -e, -f, and -g.

23. As a result of the foregoing acts and omissions of Defendants, Defendants  
 24 are liable to Plaintiff in the sum of his actual damages, statutory damages, fees and  
 25 costs.

## 26. VI.

### 27. **SECOND CLAIM FOR RELIEF**

28. Plaintiff repeats and realleges and incorporates by reference paragraphs one  
 29 through twenty-one above.

30. Defendants' violations of the state Acts include, but are not limited to, the  
 31 following: NRS Chapters 598 *et seq.*, and 649 *et seq.*, by using any device, subterfuge,  
 32 pretense or deceptive means or representations to collect any debt.

33. All of Defendants' acts as described above were done intentionally and

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1 with malice for the purpose of coercing Plaintiff to pay an alleged, past-due, debt; a debt  
2 not owed by Plaintiff.

3 **24.** As a result of the above violations of the state Acts, the Defendants are  
4 liable to the Plaintiff in the sum of Plaintiff's actual damages, statutory damages,  
5 punitive damages, fees and costs.

6 **VII.**

7 **DEMAND FOR JURY TRIAL**

8 **25.** Please take notice that Plaintiff demands trial by jury in this action.

9 **WHEREFORE**, Plaintiff respectfully prays that judgment be entered against  
10 Defendants, and each of them, as follows:

11 (a) For statutory damages pursuant to 15 U.S.C. § 1692k(a);  
12 (b) For actual damages in an amount to be determined;  
13 (c) For exemplary damages;  
14 (d) For reasonable attorney fees for all services performed by counsel in  
connection with the prosecution of this claim;  
15 (e) For reimbursement for all costs and expenses incurred in connection with  
the prosecution of this claim; and  
16 (f) For such other and further relief as this Court deems just and proper.

17 DATED this 4<sup>th</sup> day of January 2007.

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